

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JEFF OLBERG, *et al.*,

11 Plaintiffs,

v.

12 ALLSTATE INSURANCE COMPANY, *et*
13 *al.*,

14 Defendants.

CASE NO. C18-0573-JCC

ORDER

15 This matter comes before the Court on Plaintiffs' motion to seal Plaintiff's motion for
16 class certification and supporting documents (Dkt. No. 103). Having thoroughly considered the
17 briefing and the relevant record, the Court hereby GRANTS the motion for the reasons explained
18 herein.

19 Consistent with Federal Rule of Civil Procedure 5.2, Local Civil Rule 5(g), and the
20 protective orders entered in this matter (Dkt. Nos. 32, 83), Plaintiff filed a redacted version of its
21 motion for class certification (Dkt. No. 104) and a sealed unredacted version of the motion (Dkt.
22 No. 106); a sealed declaration from John M. DeStefano with associated exhibits (Dkt. Nos. 107,
23 107-1–107-22); a sealed declaration from Larry Hausman-Cohen (Dkt. No. 107-23); sealed
24 expert reports by David Schwickerath, Lance Kaufman, William Berglund, and Darrell Harber
25 with associated exhibits (Dkt. Nos. 107-24–27); and a sealed declaration from Elizabeth Gibson
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1 with associated exhibits (Dkt. No. 107-28). The redacted and sealed information contained in
 2 these documents has been designated by Defendants' counsel as confidential and/or highly
 3 confidential-attorney's eyes only pursuant to the previously entered protective orders in this case.
 4 (Dkt. Nos. 103 at 2, 110 at 2–4; *see* Dkt. Nos. 32, 83.) Defendants assert the documents contain
 5 proprietary information that could be used by competitors against Defendants if made publicly
 6 available. (Dkt. Nos. 103 at 2–4, 110 at 4–6.)

7 “Historically, courts have recognized a ‘general right to inspect and copy public records
 8 and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of
 9 Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
 10 U.S. 589, 597 (1978)). That right is reduced when applied to confidential and proprietary
 11 business records. *Id.* at 1179; *see In re Electronic Arts*, 298 F. App’x 568, 569 (9th Cir. 2008).
 12 This is particularly true for records attached to nondispositive motions. *In re Midland Nat. Life
 13 Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115 (9th Cir. 2012).

14 The motion at issue is a class certification motion (Dkt. No. 104). While courts may
 15 consider the merits of a party’s underlying claim in ruling on such motions, the primary
 16 consideration for the Court is whether the class device is appropriate. *Wal-Mart Stores, Inc. v.
 17 Dukes*, 564 U.S. 338, 348–49 (2011). This Court considers the class certification motion here to
 18 be nondispositive. On this basis, it applies the “good cause” standard articulated in Federal Rule
 19 of Civil Procedure 26(c). *Kamakana*, 447 F.3d at 1180. Therefore, only a “particularized
 20 showing” of harm from disclosure is required. *Id.*

21 The Court has reviewed the records at issue and concluded that a showing of harm has
 22 been made in the instant matter. Disclosure of the sensitive information included in the records
 23 would cause irreparable harm to Defendants because it would provide Defendants’ competitors
 24 information about how it conducts its business.

25 For the foregoing reasons, Plaintiffs’ motion to seal (Dkt. No. 103) is GRANTED. The
 26 Clerk is DIRECTED to maintain under seal Docket Numbers 106 and 107-1 through 107-28.

1 DATED this 31st day of March 2021.
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John C. Coughenour

5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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